

Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.605. (This is a PLR).

July 17, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter that our office received on May 25, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code 1200.110 appears to be contained in your request. Please refer to <http://www.revenue.state.il.us/legalinformation/regs/part1200>. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are COMPANY. We manufacture PRODUCT in the state of IL. We ship these building to all 50 states and other countries. Our terms state (see copy attached) that title passes at the time commercial carrier picks up at our docks (FOB Plant). Most of the time (99%), our customers are buying our product for resale and sign a resale certificate, but on occasion they are buying for personal use outside the state of IL. We currently ship to our customers under four different cases as outline below.

At this time we need a private letter ruling on the tax liability of sales under the following conditions for the state of IL:

1. Our product is sold to an out of state customer who will be purchasing the product for personal use and will not be returning the product to the state of IL. Product will be shipped via common carrier as arranged by COMPANY. COMPANY will bill customer for freight on customer invoice. COMPANY will pay for the freight. Title transfers in the state of IL at our dock. Does an IL sales/use tax liability result from the sale of products to

an out of State customer when title passes in IL but possession is taken out of State?

2. Our product is sold to an out of state customer who will be purchasing the product for personal use and will not be returning the product to the state of IL. Product will be shipped via common carrier as arranged by COMPANY. Customer will pay for the freight directly to the common carrier. Title transfers in the state of IL at our dock. . Does an IL sales/use tax liability result from the sale of products to an out of State customer when title passes in IL but possession is taken out of State?
3. Our product is sold to an out of state customer who will be purchasing the product for personal use and will not be returning the product to the state of IL. Product will be shipped via common carrier as arranged by the customer. Customer will pay for the freight directly to the common carrier. Title transfers in the state of IL at our dock. . Does an IL sales/use tax liability result from the sale of products to an out of State customer when title passes in IL but possession is taken out of State?
4. Our product is sold to an out of state customer who will be purchasing the product for personal use and will not be returning the product to the state of IL. Product will be picked up by the customer and transported out of state. Title transfers in the state of IL at our dock. . Does an IL sales/use tax liability result from the sale of products to an out of State customer when title passes in IL but possession is taken out of State?

Where our conflict comes from is that Publication 104, Regulation 130.605 and General Letter Ruling 94-0194 imply that anytime the product is shipped via common carrier outside of Illinois, the sales transaction would be exempt under the Interstate Commerce exemption. According to this research it does not matter where title is transferred but the issue is where physical possession takes place.

On the opposite side of the issue, the Statutes define 'sale at retail' as 'any transfer of the ownership of or **title** to tangible personal property to a purchaser". In COMPANY, case title transfers in Illinois and is therefore considered a taxable sale regardless of the fact that the product may then be shipped outside of Illinois.

We are currently not under audit and have not had this issue ruled upon by the dept. in the past.

We currently have a problem with a CA vendor who does not want to pay IL sales tax and we need this ruling back as quickly as possible. If there is any way you could fax this ruling to us as soon as possible

July 17, 2000

it would be a big help. We would also like to have it in hard copy by mail.

In preparing our response to the four scenarios set out in your letter, we have reviewed the statement of your Conditions of Sale that was appended to your letter.

Enclosed is a copy of 86 Ill. Adm. Code 130.605 concerning Sales of Property Originating in Illinois. Subpart (c) of this regulation states that Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax, although there may be a tax liability in the other state involved in the transaction.

However, sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois, 86 Ill. Adm. Code 130.305(a)(1) and (2). This would be the case if the purchaser arranges and pays for the shipping, and the carrier takes possession of the property in this State.

Based upon these principles as applied to your factual scenarios, we conclude that COMPANY would be liable for Retailers' Occupation Tax and your customer would be subject to Illinois Use Tax for scenario 4.

Scenario 3 would be subject to Illinois tax if your customer would contract for the common carrier, so that the shipping documents show the customer as the shipper, and the carrier would receive possession of the property in Illinois. In this case the carrier would be considered the representative of the purchaser under 86 Ill. Adm. Code 130.605(a)(1).

For situations 1 and 2, the transactions would be considered to be in interstate commerce and not subject to Illinois tax, so long as COMPANY is shown as the shipper or consignor on the shipping documents. The fact that the customer pays the freight charge directly to the carrier in number 2 does not change this result.

Your citation to the definition of a "sale at retail" is correct as this language is contained in the definition section of the Retailers' Occupation Tax Act, 35 ILCS 120/1. It is important to remember that this definition and the authority of Illinois to tax a sale at retail are limited by Section 2-60 of the same Act (35 ILCS 120/2-60). Section 2-60 prohibits taxation of transactions that are within the interstate commerce exemption. Thus the fact that title passes in Illinois will not change the exemption status of situations 1 and 2. Please refer to 86 Ill. Adm. Code 130.605(d).

July 17, 2000

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl Betz
Associate Counsel

KB:msk
Enc.